MAT YASSIN DOLLAH

v.

IBRAHIM HUSSIN & ANOR

HIGH COURT MALAYA, KOTA BHARU
DATO' NIK HASHIM NIK AB RAHMAN JC
[CIVIL APPEAL NO: 12-12-1995]
13 AUGUST 1996

CIVIL PROCEDURE: *Appeal - Record of appeal - Decision appealed from - Failure to include - Subordinate Courts Rules 1980, O. 49 r. 3A(1)(d) - Whether appeal can proceed - Whether appeal should be struck out.*

CIVIL PROCEDURE: *Appeal - Decision - Meaning of - Order of the Court - Subordinate Courts Rules 1980, O. 49 r. 1.*

CIVIL PROCEDURE: *Appeal - Decision - Whether synonymous with grounds of judgment.*

CIVIL PROCEDURE: *Appeal - Decision - Order of the Court - Whether order must be approved and sealed by Registrar.*

CIVIL PROCEDURE: *Appeal - Decision - Draft order - Uncertified photostat copy of order - Whether constitutes decision of Court.*

CIVIL PROCEDURE: *Rules of Court - Subordinate Courts Rules 1980, O. 49 r. 3A(1) - 'Shall' - Whether strict compliance with rule required - Whether failure to enclose necessary items in appeal record will render it defective - Whether rules of Court must be obeyed - Whether must be meticulously and faithfully complied with.*

This was an appeal by the appellant against the decision of the Sessions Court in dismissing his action for damages. Before the hearing of the appeal, Counsel for the respondents raised the preliminary objection that the appellant's appeal record had contravened O. 49 r. 3A(1)(d) of the Subordinate Courts Rules 1980 ('the SCR') in that it did not contain a copy of the 'decision of the Court appealed from' ('the decision'). Counsel for the appellant, however, submitted that the requirement of O. 49 r. 3A(1) of the SCR is only technical in nature and that it has no legal consequence. Thus, she urged the instant Court to hear the appeal on its merits.

Held:

[1] Order 49 r. 3A(1) of the SCR was applicable to the instant appeal as the decision of the Sessions Court Judge was made after the trial.

[2] Order 49 r. 3A(1) of the SCR imposed a duty on the appellant to prepare the requisite number of copies of the appeal record which must contain six items, one of which being the decision as prescribed in O. 49 r. 3A(1)(d).

[3] The decision must not be mistaken, as it often is, for the grounds of judgment. The decision means the order of the Court appealed from (as defined in O. 49 r. 1 of the SCR), and it must be approved and sealed by the Registrar.

[4] A draft order or an uncertified photostat copy of the order is not the decision of the Court. An appeal record without the decision is incomplete; and an incomplete record is as good as no record at all. The decision is very important; without the decision in the appeal record, an appellate Court will not be able to verify the accuracy of the trial Court's order when considering the appeal.

[5] Order 49 r. 3A(1) of the SCR is mandatory in its terms by reason of the word 'shall' contained therein. Accordingly, strict compliance with the provisions of O. 49 r. 3A(1) of the SCR is required; a failure to enclose any one of the necessary items in the appeal record will render it defective. The rules of the Court must be obeyed; they must be meticulously and faithfully complied with.

[Appeal struck out]

Cases referred to:

Teoh Soon Kok TIA TSK Supplies Trading v. MBF Finance Berhad [1996] 2 CLJ 130 ***(foll)***

Datuk Bandar Kuala Lumpur v. Seman bin Amat & 2 Other Cases, [1996] CLJ JT (19); [1996] 3 CLJ 263 ***(foll)***

Ratnam v. Cumaraswamy & Anor. [1965] 31 MLJ 228 ***(refd)***

S. Ravi a/l G. Suppiah v. Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor. [1995] 2 CLJ 152 ***(refd)***

Sykt. Telekom Malaysia Bhd. v. Business Chinese Directory Sdn. Bhd. [1993] 3 CLJ 629 ***(refd)***

Legislation referred to:

Subordinate Courts Rules 1980, O. 29 r. 9(4), O. 49 rr. 1, 3A(1)(d), 6(3)(d)

For the appellant - Nor Atikah Mahyidin; M/s. Sandu & Co.
For the respondents - Ahmad Zaki Mohd. Daud, FC

JUDGMENT

Nik Hashim Nik Ab. Rahman JC:

This is an appeal against the decision of the Sessions Court Judge Kota Bharu wherein he dismissed the appellant's claim for damages arising out of a motor road accident.

Before the start of the appeal, Encik Ahmad Zaki bin Mohd. Daud, the learned Federal Counsel for the respondents, raised a preliminary objection on a point of law in that the appeal record did not contain a copy of the decision of the Court appealed from thereby contravening O. 49 r. 3A(1)(d) of the Subordinate Courts Rules 1980 (the SCR), and cited *Teoh Soon Kok T/A TSK Supplies Trading v. MBF Finance Berhad* [1996] 2 CLJ 130 in support of his objection.

The decision of the learned Judge was made after trial. Hence O. 49 r. 3A(1) applies in this case. Order 49 r. 3A(1) of the SCR provides:

> When the appellant who is represented by a solicitor has complied with the requirements of r. 2 of this Order, the appellant shall prepare the requisite number of copies of the appeal record and the record shall contain copies of:
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> (a) the relevant pleadings;
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> (b) the notes of evidence;
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> (c) the grounds of judgment, provided that the absence of the grounds of judgment shall not prevent the appellant from proceeding with his appeal;
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> (d) the decision;
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> (e) the notice of appeal;
>
> (f) all such documentary exhibits and other documents the parties shall consider relevant for the purposes of appeal.

Nor Atikah Mahyidin, who appeared for the appellant, conceded the omission to include the decision in the appeal record, but argued that the requirement of the rule was only technical in nature which had no legal consequence and as such, she urged the Court to proceed with the hearing of the appeal on the merit of the case instead.

In my judgment, O. 49 r. 3A(1) imposes a duty on the appellant to prepare the requisite number of copies of the appeal record to contain six items, one of which is the decision: r. 3A(1)(d). The decision (often mistaken for the grounds of judgment) here means the order of the Court appealed from (r. 1) and approved and sealed by the Registrar. A draft order or an uncertified photostat copy of the order is not a decision of the Court. In *Teoh Soon Kok (supra)*, the respondent raised almost a similar objection, albeit under a

different rule, that the appellant failed to file a copy of the decision in the appeal record as required by r. 6(3)(d). There, the appellant filed merely a copy of the draft judgment of the Court in the appeal record. In upholding the preliminary objection and dismissing the appeal with costs, Mohd. Hishamudin Mohd. Yunus J, held that (i) a draft judgment is not a decision for the purpose of r. 6(3)(d); (ii) the decision in r. 6(3)(d) means a sealed document approved by the Registrar under O. 29 r. 9(4); and (iii) uncertified photostat copies are not copies for the purpose of subrule (3)(d).

In the result, the appeal record without the decision is incomplete. In my view, an incomplete record is as good as no record at all. The decision is very important. Without the decision in the record, the appellate Court would not be able to verify the accuracy of the Court's order when considering the appeal.

Order 49 r. 3A(1) is mandatory in its terms by reason of the word 'shall' in the rule. (See *Datuk Bandar Kuala Lumpur v. Seman bin Amat & 2 Other Cases*, [1996] CLJ JT (19); [1996] 3 CLJ 263. Accordingly, strict compliance of its provision is called for and failure to enclose any one of the items in the record as required by the rule, in my view, will render the appeal record defective. It has been said time and again that rules of Court must be obeyed (*Ratnam v. Cumaraswamy & Anor*. [1965] 31 MLJ 228) and must be meticulously and faithfully complied with (per Low Hop Bing JC, (now a High Court Judge) in *S. Ravi a/l G. Suppiah v. Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor*. [1995] 2 CLJ 752, at p. 154). Failure to comply with them will lead to chaos in the conduct of litigation (*Sykt. Telekom Malaysia Bhd. v. Business Chinese Directory Sdn. Bhd.* [1994] 2 MLJ 420; [1993] 3 CLJ 629, SC at p. 423 per Eusoff Chin SCJ (now Yang Amat Arif Chief Justice of the Federal Court).

Thus, without the decision and following *Teoh Soon Kok's* case, I hold that the appeal record in the present case was not properly before the Court. The record suffered from a serious defect for not being in compliance with the strict rules of O. 49 r. 3A(1)(d) of the SCR. Since the objection does not involve the merit of the case, the proper order, to my mind, is to strike out the appeal with costs to the respondent. I therefore made the order accordingly.

Reported by Gan Peng Chiang